*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.Nos.14982 & 16503 of 2005

% 4-12-2007

P.Raghunath Reddy
And others .... Petitioners

And

$ The Assistant Commissioner,
Endowments Department,
Mahaboobnagar District
And others .... Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri M.Sudheer Kumar

^ Counsel for respondents : G.P. for Endowments

?CASES REFERRED :

1. (2007) 7 SCC 482
2. 2007(1) ALD 262
3. 2004(2) ALD 148

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.Nos.14982 & 16503 of 2005

Date : 4-12-2007

Between :

P.Raghunath Reddy
And others ....
Petitioners

And

The Assistant Commissioner,
Endowments Department,
Mahaboobnagar District
And others ....
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.Nos.14982 & 16503 of 2005

COMMON ORDER:

1. These two Writ Petitions are being disposed of by a Common Order in view of the commonality of the questions of fact and questions of Law involved in both these matters. The Counsel no doubt brought it to the notice of this Court that yet another connected Writ Petition, W.P.No.14180/2004, questioning the auction is said to be pending, but on verification it is found that the said Writ Petition was dismissed as having become

infructuous. In the light of the same, these Writ Petitions are being disposed of by this Common Order.

2. The petitioners P.Raghunatha Reddy and others filed W.P.No.14982/2005, praying for a Writ of Mandamus declaring the action of the 1st respondent in issuing the impugned proceedings in Rc.No.B/441/2004 dated 6-7-2005 as illegal, arbitrary, without power or authority, opposed to the principles of natural justice offending Articles 14 and 21 of the Constitution of India and consequently to direct the respondents not to interfere with the possession and enjoyment of the petitioners over the lands in Sy.No.697, 699 and 700 of Veepanagandla village and Mandal, Mahaboobnagar District and to pass such other suitable orders.

3. Likewise, the writ petitioners P.Sarva Reddy and another filed W.P.No.16503/2005 praying for a Writ of Mandamus declaring the action of the 1st respondent in issuing the impugned proceedings in Rc.B/441/2004 dated 6-7-2005 as illegal, arbitrary, without power or authority, opposed to the principles of natural justice and offending Articles 14 and 21 of the Constitution of India and consequently to direct the respondents not to interfere with the possession and enjoyment of the petitioners over the lands in Sy.Nos.697, 699 and 700 of

Veepanagandla, Mahaboobnagar District and to pass such other suitable orders.

4. It is needless to say that in both these Writ Petitions, the same proceedings dated 6-7-2005 had been impugned, which reads as hereunder:-

Office of the Assistant Commissioner,
Endowments Department, Mahabubnagar
Rc.No.B/441/2004, Dated 6-7-2005:

Sub:- Endowments Department – Mahaboobnagar District – Sri Chennakeshava Swamy Temple, - Weepangandla (V) & (M), Sale of lands to land less poor – Recognising the Landless poor – Certain of the Individual – Rejected – Orders – Issued – Regarding.

Ref:- 1. Notice U/s 82 from the Manager of the temple dated 2-5-2003

2. Manager of the temple Lr.

3. Inspector, Endowments Department, Nagarkurnool Lr.No.2004, dated 18-5-2004.

4. Application dated 9-7-2003 from Sri Vijaya Kumar Reddy, 2.P.Raghunatha Reddy, 3. P.Sainatha Reddy, 4. Sri P.Sarva Reddy, 5.Smt.Kistamma, 6.Sri P.Harinatha Reddy, 7.Sri P.Sudhakar Reddy.

5. M.R.O. Weepangandla Lr.No.B/3108/2005, dated 28-6-2005.

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The attention 1. of Sri Vijaya Kumar Reddy, 2.Sri P.Raghunatha Reddy, 3.Sri Sainatha Reddy, 4.Sri P.Sarva Reddy, 5. Smt.Kistamma, 6.Sri P.Harinatha Reddy and 7.Sri P.Sudhakar Reddy, are informed that due to wrong information furnished by the

Mandal Revenue Officer, Weepangandla. The proposals were submitted by the then Assistant Commissioner, Endowments Department, Mahaboobnagar to Commissioner, Endowments Department, Hyderabad for sale of lands under Section 82 of the Act of 30 of 1987 for eligible landless poor. After several complaints received from the villagers the Mandal Revenue Officer, Weepangandla has been requested to re-conduct the enquiry for issuing the landless poor certificate for the above individuals.

After detailed enquiry by the Mandal Revenue Officer, Weepangandla has submitted his report vide his office Rc.No.B/3108/2005, dated 28-6-2005 stating that the above individuals are not landless poor and they are having other lands in the village. As per guidelines issued in G.O.Ms.No.379, Revenue (Endowments-1) Department, dated 11-3-2003 they are not come under category of landless poor. The then Assistant Commissioner, Endowments Department, Mahaboobnagar has also not declared that the individual are landless poor and he simply forwarded the Manager proposals for consideration of the Commissioner, Endowments Department, Hyderabad.

In view of the above the individuals are informed that they are not landless poor as per report of Mandal Revenue Officer, Weepangandla. Hence applications hereby rejected.

Sd/-
Asst. Commissioner

5. Sri Sudhir Kumar, the learned Counsel representing the writ petitioners in both these Writ Petitions made the following submissions. The learned Counsel would contend that at one point of time the learned Assistant Commissioner, Endowments Department was satisfied relating to the status of the writ petitioners as landless poor persons and in fact had recommended to the Commissioner, Endowments Department for taking the further steps, and by virtue of the change of the concerned Assistant Commissioner, Endowments, yet another order which is impugned in the present Writ Petition holding that the writ petitioners are not landless poor persons, cannot be made. The learned Counsel in all fairness would contend that no doubt there is a remedy by way of Appeal, but here is a case where there was no notice in accordance with the Rules governing the field. The learned Counsel also would point out that the Mandal Revenue Officer also was made a party, but no separate counter affidavit as such had been filed though the principal ground taken in the counter affidavits is to the effect that on the report of the said Mandal Revenue Officer, the order was made. The learned Counsel also would maintain that these are all independent tenants and the details and the particulars

owned by these respective tenants also had not been specified. The learned Counsel also commented that there was no regular Mandal Revenue Officer at the relevant point of time and some incharge Mandal Revenue Officer was prevailed upon to give a particular type of report and without giving any further opportunity, making a subsequent order is definitely without jurisdiction and also in violation of the principles of natural justice for the reason that in a way it would amount to reviewing or modifying the prior order of the prior Assistant Commissioner of Endowments Department and this is impermissible. The learned Counsel had taken this Court through the respective pleadings of the parties and also the relevant provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987, hereinafter in short referred to as “Act” for the purpose of convenience, and also the relevant Rules i.e., A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules 2003, in short referred to as “Rules” for the purpose of convenience.

6. The learned Assistant Government Pleader for Endowments would maintain that in the prior order the alleged recommendation made by the Assistant Commissioner of Endowments Department, in a way is

nonest in the eye of Law and the said order has no legal sanctity. No applications were made by these writ petitioners at any point of time in accordance with the Rules. The alleged letter said to have been communicated by the then Assistant Commissioner of Endowments to the Commissioner of Endowments may be of no consequence. The essential ingredients to be satisfied under Section 82 of the Act definitely had not been satisfied. These must be recognized landless poor persons and they should be existing lessees as per Law and the leases should be approved leases. The learned Assistant Government Pleader, Endowments also had drawn the attention of this Court to Section 82 of the Act and also Rules 3, 4 and 5 of the Rules and would draw a distinction between Form-I and Form-II contemplated by Rule 5(1) and Rule 5(2) of the Rules respectively and would maintain that the procedure had been followed in these matters and hence the writ petitioners cannot be permitted to contend that either the Rules had been violated or the principles of natural justice had not been followed. Apart from this aspect of the matter, the learned Assistant Government Pleader also would contend that almost all these writ petitioners are employees having sufficient income and in any view of the matter, they would

not fall under the definition of 'landless poor persons'. The learned Assistant Government Pleader for Endowments placed strong reliance on certain decisions to substantiate his submissions.

7. Sri Prasad, the learned Standing Counsel representing the Institution had taken this Court through para-3 of the affidavit filed in support of the Writ Petition and also para-4 of the counter affidavit and would maintain that as far as the counter affidavit of the 3rd respondent is concerned, no reply affidavit as such had been filed and several of the averments made in the said counter affidavit in fact stand uncontroverted or unexplained. The learned Counsel also had drawn the attention of this Court to Rule 8 of the Rules and would maintain that inasmuch as there is clear proof relating to the extents owned by the writ petitioners, the impugned order cannot be found fault. The Counsel substantially adopted the averments made by the learned Government Pleader for Endowments in this regard.

8. Heard the Counsel on record and perused the records.

9. The reliefs prayed for in these Writ Petitions already had been specified above. The impugned order also had been referred to supra. Reference No.4 in the

impugned order is application dated 9-7-2003 from Sri Vijaya Kumar Reddy, 2.P.Raghunatha Reddy, 3. P.Sainatha Reddy, 4. Sri P.Sarva Reddy, 5.Smt.Kistamma, 6.Sri P.Harinatha Reddy, 7.Sri P.Sudhakar Reddy. The 5th reference is Lr.No.B/3108/2005, dated 28-6-2005 of Mandal Revenue Officer, Weepangandla. The 1st reference is notice under Section 82 from Manager of the Temple dated 2-5-2003. It may not be out of context if the relevant observation made by the Assistant Commissioner of Endowments in the impugned proceeding be referred to and the same reads as hereunder :

> "The then Assistant Commissioner, Endowments Department, Mahaboobnagar has also not declared that the individual are landless poor and he simply forwarded the Manager proposals for consideration of the Commissioner, Endowments Department, Hyderabad.
>
> In view of the above the individuals are informed that they are not landless poor as per report of Mandal Revenue Officer, Weepangandla. Hence applications hereby rejected."

The report of the FAC-Mandal Revenue Officer, Weepangandla, also is placed before this Court.

10. In W.P.No.14982/2005, it is averred that the petitioners are the cultivating tenants of the lands

belonging to the 3rd respondent temple and they had been cultivating the said lands for the last about 8 to 15 years which is evident from the revenue records maintained by the revenue authorities. Further, all the petitioners had been in possession of about Acs.4.00 of dry land in Sy.Nos.697, 699 and 700 of Veepangandla village and they did not possess any other land other than the land belonging to the temple and they had been paying rents to the temple regularly. Further it is averred that while so, during the year 2003-2004, the respondents had conducted auction to the land in question and the petitioners had been the successful bidders in the said auction in respect of the land in their possession respectively. It is further averred that thereafter the petitioners on coming to know that their rights as landless poor persons, made an application to the 1st respondent for identifying them as landless poor persons and to continue them as landless poor of the lands in question.

The 1st respondent having verified the true facts and on adjudicating the matter with reference to the records and the evidence produced by the petitioners and also the enquiries conducted through the Departmental Inspectors had come to the conclusion that the petitioners are the landless poor persons and they are entitled for the benefit

under Section 82 of the Act 30 of 1987 and accordingly recommended to the Commissioner of Endowments, Andhra Pradesh through Letter No.A/441/2004 dated 25-5-2004. It may be appropriate to look at the said proceeding which reads as hereunder :

Office of the Assistant Commissioner
Endowments Department, Mahaboobnagar

Lr.No.A/441/2004, Dated : 26-5-2004

To
The Commissioner,
Endowments Department,
Hyderabad.

Sir,

Sub:- Endowments Department – Mahaboobnagar District – Sri Chinna Kesava Swamy Temple – Veepangandla (V) & (M) – Sale of lands to the sitting tenants – Proposal – Submitted.

Ref: 1. This office Rc.No.A/441/2004 dt.31-3-2004
2. Application from the sitting tenants, Dt.25-5-2004.

Kind attention is invited to the reference 1st cited, in which I have submitted the proposals for according permission sale the lands to the sitting tenants for purchasing the land. The applicants have submitted the certificate stating that they are landless poor and are not having the land except the proposed land and they have submitted the certificate from the Sarpanch of the village stating that having 50 yards of house and the Mandal Revenue Officer, Veepangandla (V) has issued no land certificate the Mandal Revenue Officer, Veepangandla (V) has issued income certificates

stating that the applicants have getting income of Rs.11,000/- per year. I submitting herewith certificate copies for taking further action occupants have also submitted the copy of Pahani for the year 2001-2002 in which their names have been shown as occupants the copy of the Pahani along with the Market value certificate issued by the Sub-Registrar, Kollapur are submitted herein.

In view of the above, I submit that the applicants are eligible to purchase the land under Section 82 of the Act 30 of 1987.

Hence I request to kindly accord permission to the sitting tenants to purchase the land under provision of the Section 82 of the Act. As per G.O.Ms.No.379, Revenue (Endowments-1), dated 11-3-2002. I am submitting herewith their application along with certificate for further action along with rough sketch of the proposed land.

Yours faithfully,
Sd/-
Assistant Commissioner.

It may be appropriate to refer to reference No.1 i.e., Rc.No.A/441/2004, dated 31-3-2004 and also reference No.2 i.e., application from the sitting tenants dated 25-5-2004. After referring to certain facts it was observed in the aforesaid proceeding:

> "In view of the above, I submit that the applicants are eligible to purchase the land under Section 82 of the Act 30 of 1987".

It is also stated that the 1st respondent herein also through his proceedings Rc.No.A/1817/2003 dated 7-7-2004 directed the 3rd respondent to collect 1/3rd of the lease amount from the petitioners in view of the fact that they are the landless poor persons and the petitioners also were directed to pay the said lease amounts. In pursuance of the said directions, the petitioners had also paid the lease amounts on 8-7-2004 to the 3rd respondent for the year 2004-2005 and receipts were also issued to that effect. The said proceeding Rc.No.A/1817/2003 dated 7-7-2004, reads as hereunder :

Office of the Assistant Commissioner
Endowments Department, Mahaboobnagar

Rc.No.A/1817/2003, Dated 7-7-2004:

Sub:- Endowments Department – Mahaboobnagar District –

Sri Chinna Keshava Swamy Temple – Veepangandla (V) & (M) – Collection of lease amount from the landless poor – Certain instructions issued – Regarding.

Ref:- 1. Application of the landless poor individuals, dated 11-6-2004.

2. Lr.No.SCEST/WGL/2004/LL, dated 11-6-2004.

3. Commissioner, Endowments Department, Hyderabad Circular Instructions Rc.No.H1/10728/2004, dated 4-6-2004.

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In view of the Circular instructions issued vide

reference IIIrd cited, the Manager of the subject temple is directed to collect the 1/3rd of lease amount from the sitting tenants if they are landless poor of the subject temple.

The landless poor of the subject temple are requested to pay the 1/3rd of lease amount to the Manager of the subject temple and obtain permanent receipt.

Sd/- K.Hari Kishan
Assistant Commissioner

It is further stated that when the 3rd respondent attempted to conduct auction of the lands in question during the year 2004, the petitioners filed Writ Petition before this Court in W.P.No.14180/2004 questioning the said action and this Court was pleased to grant interim stay of the proposed action and the said Writ Petition, now it is brought to the notice of this Court, was dismissed as infructuous. Further, it is stated that while the things stood thus, the petitioners made representation dated 12-4-2005 to the 1st respondent to permit the petitioners to pay the lease amount for the year 2005-2006 and though the petitioners had offered to pay the lease amounts to the 3rd respondent, he could not receive the same as the 1st respondent had not issued any proceedings for the current year. As the petitioners had been in possession of

the lands in question for the last several years and were already adjudged as landless poor persons by the 1st respondent, they had started agricultural operations in the lands in question and seedling of groundnut, paddy, green gram etc., had been taken up investing huge amounts on the said crops. However, the 1st respondent appeared to have issued proceedings in Rc.No.B/441/2004, dated 6-7-2005 and communicated the same to the petitioners. In the said proceedings it was claimed that as per the detailed enquiry conducted by the Mandal Revenue Officer, Veepangandla Mandal, the petitioners are not the landless poor persons and therefore the applications of the petitioners are rejected. Questioning the said proceedings dated 6-7-2005 the present Writ Petition had been filed. It is further stated that the petitioners were already adjudged as landless poor persons by the 1st respondent as early as in the year 2004 and the same was communicated to the petitioners. Thus, the decision was already taken by the competent authority under Rule 3 of the Rules issued in G.O.Ms.No.379 dated 11-3-2003. The same was also communicated to the 3rd respondent. It is further stated that if at all the 3rd respondent is aggrieved by the said proceedings, it is open to the 3rd respondent to file Appeal

as contemplated under Rule 4 of the Rules, but no such Appeal written statement filed and the said proceedings dated 25-5-2004 became final. Therefore the 1st respondent has no power or authority to reopen or review the said issue once again under Rule 3 of the Rules. Further, no notice was issued to the petitioners before issuing the impugned proceedings. Further, the 4th respondent also never conducted any enquiry on notice to the petitioners. In fact, the petitioners came to know on enquiries made after the receipt of the impugned proceedings that the 3rd respondent, taking advantage of the fact that the post of the Mandal Revenue Officer, Veepangandla is vacant and the Superintendent of the said office is the in-charge of the post of the Mandal Revenue Officer, prevailed over him and got a report in a clandestine manner without proper verification with reference to the records and on such report the 1st respondent now appeared to have passed the impugned order. The report of the Mandal Revenue Officer was also not furnished to the petitioners at any relevant point of time. It is also further stated that there is no justification for the 1st respondent to ignore the reports submitted by their own Officers and to rely upon the report of the 4th

respondent. The 1st respondent has no power or authority to reopen the issue. Mere change in the Officer holding the post of the 1st respondent will not entitle them to pass orders from time to time when there is a specified mechanism under the Rules. As the 3rd respondent failed to file any Appeal within 30 days as contemplated under Rule 4 of the Rules, the decision adjudging the petitioners as landless poor persons became final and binding on the respondents. Certain rights had been accrued to the petitioners by virtue of such decision which was taken in the year 2004 and such accrued rights cannot be allowed to be taken away by the respondents in an arbitrary manner in gross violation of the principles of natural justice. It is also further averred that the petitioners did not own any lands except the lands which are in their occupation as tenants of the 3rd respondent temple. Any report or the information gathered by the respondents contrary to the same is without any basis and contrary to the true facts. Further, had there been any opportunity either before the 4th respondent or before the 1st respondent, the petitioners would have demonstrated the true facts before them. There is no justification for the respondents to act in such an unfair manner being public authorities. The respondents had acted in an

irresponsible manner while infringing the rights of the petitioners. The reason given in the impugned proceeding that the then Assistant Commissioner, Mahaboobnagar had not decided that the individuals are landless poor and that he simply forwarded the Manager proposals for consideration of the Commissioner is totally false and contrary to the true facts. Further it is stated that as per Rule 3 of the Rules issued in G.O.Ms.No.379, the 1st respondent is under statutory obligation to afford reasonable opportunity to the petitioners before passing any order under Rule 3 of the Rules. In the instant case, no such opportunity was afforded to the petitioners by the 1st respondent though he is re-exercising the power under Rule 3 of the Rules. Therefore, the action of the respondents is totally without power or authority and in gross violation of the principles of natural justice and hence the petitioners are entitled to approach this Court questioning the proceedings of the 1st respondent without availing the remedy of Appeal. The petitioners had already raised the crops by investing huge amounts and if they are to be dispossessed by taking advantage of the impugned proceedings or any auction of the leasehold rights of the lands in question is conducted, the petitioners will suffer irreparable loss and injury. The petitioners are

totally dependent on the lands in question. The respondents 1 to 3 had been taking steps to conduct auction of the leasehold rights of the lands in question. Further, so far the petitioners were not dispossessed and they had been in continuous possession of the lands.

11. W.V.M.P.No.2530/2005 in W.P.No.14982/2005 had been filed to vacate the interim order dated 22-7-2005 granted in W.P.M.P.No.19038/2005 and 19039/2005 and a counter affidavit is filed by the respondents 1 and 2. A reply affidavit thereto also had been filed. Separate counter affidavit had been filed on behalf of the 3rd respondent. However, no separate specific reply affidavit had been filed in relation to the counter affidavit of the 3rd respondent. In the counter affidavit filed by the respondents 1 and 2, it is averred that Chennakesava Swamy Temple situate at Veepangandla village and Mandal, Mahaboobnagar District is a very old temple and it is registered as 6C temple and the said temple is having lands in Sy.Nos.17, 473, 697, 699 and 700, having a total extent of Acs.30-35 cents. It is further averred in para-5 that the petitioners are in occupation of the 3rd respondent-temple lands and the petitioners are not landless poor persons inasmuch as they own other lands

in the village in Sy.Nos.319/A, 320, 696/AA, 701/A, 702, 280/A and 755 having a total extent of more than Acs.5-00 each and therefore they do not come within the meaning of landless poor persons. It is further stated that the then Assistant Commissioner of Endowments Department had addressed a letter bearing No.A/441/2004 dated 26-5-2004 wherein it had been stated that the petitioners had submitted a certificate from the Sarpanch of the village that they are having 50 yards of house plot and also the Mandal Revenue Officer had issued a No Land Certificate and requested to consider their case for selling the temple lands in their favour and enclosing their applications and the letter addressed to the Commissioner for necessary orders seeking permission to sell the lands under Section 82 of the Act. The said letter addressed by the then Assistant Commissioner of Endowments to the Commissioner of Endowments does not declare that the petitioners are landless poor persons and the said letter cannot be equated with a declaration made under Rule 3 of the Rules and therefore the averment that had been made that the petitioners are landless poor persons is misconceived. It is further stated that it is true that the petitioners had filed W.P.No.14180/2004 questioning the action of the respondents in proposing to conduct open

auction for lease of the lands for the year 2004-05 and a detailed counter affidavit had been filed in the said Writ Petition. Further, it is stated in para-7 that the petitioners absolutely have no right to continue in possession of the temple lands forever and they cannot deal with the lands as they like inasmuch as it is for the authorities to deal with the lands, more particularly, in the matter of leasing of the lands in terms of Rule 7 of the Rules which postulates that all leases shall be by public auction. Further, when the statutory Rule prescribes that all the leases of the land belonging to the temple shall be by public auction, the writ petitioners have no right to continue in occupation of the lands after expiry of their lease period and by virtue of the orders of this Court they had continued for the year 2004-05 since the subject matter of the earlier Writ Petition No.14180/2004 is for the year 2004-05 only and therefore the offer that had been made by the petitioners for the year 2005-06 is not accepted and they were never adjudged as landless poor persons in terms of Rule 3 of the Rules and therefore the averments to the contra had been denied. It is further stated that equally the petitioners do not get any right over the temple lands merely because they had raised any crop without there being any authority to continue in possession and

enjoyment of the temple lands and such an act of seedling of groundnut does not give any vested right to the petitioners over the temple lands and hence the said averments had been denied. It is also further averred in para-8 that the then Assistant Commissioner never made a declaration that the petitioners are landless poor persons and he had only addressed to the Commissioner to consider their case under Section 82 of the Act and when it came to the notice of the authorities that the petitioners had played fraud on them and produced false records before the then Assistant Commissioner, the Executive Officer of the temple had addressed to the Mandal Revenue Officer, Veepangandla to verify the genuineness or otherwise of the status of the petitioners as landless poor persons and the Mandal Revenue Officer in proceedings No.B/3108/2005 dated 28-6-2005 had submitted a report with the details of survey numbers and the extents of land owned by the petitioners and as a consequence the proceedings dated 6-7-2005 had been issued and which is only the rejection orders in pursuance of their original application to declare them as landless poor persons and therefore absolutely there is no illegality or irregularity in the orders of the 1st respondent dated 6-7-2005. Further it is stated that apart from the same, if the

petitioners are aggrieved by the orders of the 1st respondent dated 6-7-2005, they have got an alternative statutory remedy of Appeal under Rule 4 of the Rules to the Regional Joint Commissioner and in the instant case the petitioners had not availed the statutory remedy of Appeal available to them and approached this Court on misconceived facts. Therefore the Writ Petition itself is liable to be dismissed. It is for the petitioners to file an Appeal under Rule 4 of the Rules and not the respondents herein inasmuch as, as already specified supra, there was never any declaration made by the then Assistant Commissioner under Rule 3 of the Rules declaring the petitioners as landless poor persons and therefore the earlier proceedings of the Assistant Commissioner cannot be termed as an order passed under Rule 3 of the Rules since the proceedings dated 26-5-2004 are only a letter addressed by the Assistant Commissioner to the Commissioner of Endowments and it is not a declaration or a statutory proceeding issued under Rule 3 of the Rules in favour of the petitioners and hence the averment that the Executive Officer of the temple ought to have preferred an Appeal under Rule 4 of the Rules against the orders of the then Assistant Commissioner dated 26-5-2004 are denied. The other

averments that the 1st respondent has no power or authority to reopen the issue is misconceived and misleading inasmuch as the present proceedings dated 6-7-2005 are not the proceedings of review, reviewing the letter of the then Assistant Commissioner dated 26-5-2004 and the present proceedings are the proceedings that had been issued under Rule 3 of the Rules and therefore the petitioners have to prefer an Appeal under Rule 4 of the Rules. The other averments had been denied as misconceived, misleading and self-serving. In reply to paras 10 and 11 of the affidavit, it is stated that Section 82 of the Act deals with lease of agricultural lands and Rule 7 of the Rules postulates that all these leases shall be by public auction and hence the averment made that there was never any notice and opportunity to the petitioners before issuing the present proceedings dated 6-7-2005 had been denied inasmuch as Rule 5 of the Rules deals with the issue of notices and a notice in Form No.1 shall be issued to the cultivating tenant other than the landless poor person duly informing him that the lease held by him stood cancelled by virtue of the provisions of sub-section (1) of Section 82 of the Act and if he does not handover possession of the land, he shall be evicted under the provisions of Sections 84, 85 and 86 of the Act treating

him as an encroacher. Under sub-rule (2) of Rule 5 of the Rules, a notice shall be issued in Form No.II to the person, who is in occupation of the temple land if he is a landless poor person and is a tenant as per sub-section (2) of Section 82 of the Act and hence it is clear that a notice in Form No.1 will be issued to the tenant who is not a landless poor person and a notice in Form No.II will be issued to a person who is a tenant and who is a landless poor person. In the instant case, a notice in Form No.1 was issued to the petitioners on 2-5-2003 asking them to handover possession of the lands and only thereafter the auction was scheduled for auctioning the leasehold rights for the year 2004-05 and which was challenged by the petitioners in the earlier Writ Petition No.14180/2004. Further it is pertinent to state that when once Form No.1 notice was issued to the petitioners treating them as not landless poor persons, it is for the petitioners to establish their case by producing the relevant material or the documentary proof to establish that they are the landless poor persons and admittedly the petitioners had not produced any evidence except relying on the letter addressed by the then Assistant Commissioner to the Commissioner of Endowments and such a letter cannot be equated to be a declaration made under Rule 3 of the Rules and hence the averments that the petitioners were

not given the opportunity to putforth their case is denied. Further, the averment made by the petitioners that they do not own any other lands except the land in their occupation belonging to the 3rd respondent temple allegations had been denied. The petitioners are not landless poor persons and they own the other extents of lands. Further it is stated in para-11 of the counter affidavit that by order dated 22-7-2005, this Court passed a common order in W.P.M.P.No.19038/2005 and W.P.M.P.No.19039/2005 granting interim suspension. W.P.M.P.No.19038/2005 was filed to suspend the proceedings of the 1st respondent dated 6-7-2005 and W.P.M.P.No.19039/2005 was filed seeking a direction not to dispossess the petitioners from the land admeasuring about Ac.4-00 each in Sy.Nos.697, 699 and 700 and by virtue of the interim orders, the petitioners though do not have any right to continue in occupation of the temple lands, are continuing and if the lands are put to public auction for the leasehold rights, the temple would be benefited since there would be opportunity to more people to participate in the open auction and therefore if the interim orders granted by this Court dated 22-7-2005 are not vacated the temple would suffer irreparable loss and injury. Further at para-12 it is specifically stated that the

petitioners 2 and 3, as per the Mandal Revenue Officer dated 28-6-2005, are the employees working at BHEL, Hyderabad and it is only the 1st petitioner who is residing in the village and the Mandal Revenue Officer had further stated that the petitioners are well off people and sound persons having other extents apart from the temple land and therefore taking into consideration the report of the Mandal Revenue Officer which is based on the entries made in the revenue records after issuing notice in Form No.1, the present proceedings dated 6-7-2005 were issued rejecting the applications of the petitioners for consideration under Section 82 of the Act since they are not the landless poor persons and absolutely there is no illegality or irregularity interest proceedings dated 6-7-2005 and the petitioners had not established their case and they do not have any right to continue in occupation of the temple lands detrimental to the interest of the temple and therefore there are no merits in the Writ Petition and the same is liable to be dismissed in limini.

12. In the counter affidavit filed by the 3rd respondent, substantially the same stand had been taken. The counter affidavit was sworn to by the Manager, Endowments Department, of Sri Chennakesava Swamy Temple. Specific stand had been taken that the

Writ Petition is not maintainable since as against the order of Assistant Commissioner, an Appeal lies to the Commissioner under Rule 4 of the Rules. The question raised by the petitioners is a pure question of fact and the same cannot be gone into in a Writ Petition. It is also stated that the benefit conferred under Section 82(2) of Act is not available to the petitioners. Further, as the petitioners came into possession of the land in the auction held for the year 2003-2004, the petitioners never enjoyed any rights as tenant at any point prior to 2003-2004. All the leases granted subsequent to the Act and the Rules framed thereunder are governed by the terms and conditions of auction. There is no protection whatsoever in respect of the auction held on or after the Rules came into force. On the expiry of the lease, the petitioners are deemed to be encroachers and are not entitled to claim any protection. Further it is averred that the petitioners are tenants in respect of the lands belonging to the 3rd respondent temple and the averment that they are cultivating the land for the last 7 to 8 years is false and not even a scrap of paper is filed before the Court to show that they are the cultivating the land for the last 7 to 8 years and hence the contentions in this regard are denied. It is reiterated that the petitioners came into

possession of the land only pursuant to the auction held in 2003-2004. Further, the contentions in para-9 of the affidavit that the petitioners are landless poor are absolutely false and incorrect. The 1st respondent never passed any order conferring any rights on the petitioners. The then Assistant Commissioner without verifying the records had submitted proposal. There is no adjudication of rights of the petitioners under the said letter and therefore the letter submitted by the then Assistant Commissioner do not confer any rights whatsoever. Absolutely no enquiry was held by the Assistant Commissioner while forwarding the letter and hence the allegations in this regard are false and incorrect and the same had been denied. With reference to the averments in paras 5 and 6 of the affidavit, it is stated that the proceedings of the 1st respondent dated 7-7-2004 are only a general instructions directing the Manager to collect 1/3rd lease amount from the landless poor. The same is not with reference to any particular individual. However, the petitioners misleading the Officers had paid 1/3rd of the lease amount for one year. When the facts came to light that the petitioners are not landless poor, the present Assistant Commissioner after calling for report from the Mandal Revenue Officer had rejected the claim of the

petitioners for sale of the land. It is further averred that the petitioners own a house at Veepangandla bearing H.No.1-9, the value of which is more than Rs.2.5 Lakhs. The petitioners and their father are residing in the said premises. In addition to the house, they have sufficient income of their own which is more than the statutory instructions imposed to claim the benefit under sub-section (2) of Section 82 of the Act. It is further averred that the 2nd petitioner is running a computer center at Narayanguda, Hyderabad and his income is in Lakhs. Similarly, the 3rd respondent is a permanent employee working in BHEL, Hyderabad and drawing more than Rs.10,000/- p.m. In addition to the income, the petitioners are getting income as aforementioned, the family owns an extent of Acs.5-02½ cents covered by Sy.Nos.319/6, 320, 698, 701, 702, 756, 758, 280/6. Apart from the landed property they own, now they are in possession and enjoyment of the temple land of an extent of Acs.4-16 gts. each. Thus, the total extent of lease hold property in possession of the petitioners is Acs.17-24 gts. The petitioners own as owners or lessees Acs.22-26½ gts. In view of the landed property they own and the income they are getting, they cannot be treated as small farmers. The petitioners had suppressed the aforesaid facts of

employment and the lands they own and approached this Court and obtained interim orders to usurp the lands. The 4th petitioner is none other than the grandmother of the petitioners and she is also living with the family in the same house and she owns agricultural land in her name to an extent of Ac.0-38 gts. in Sy.No.319. Further, with reference to the averments in paras 7 and 8 of the affidavit, it is stated that the benefit conferred under sub-section (2) of Section 82 of the Act is applicable only to the tenants who are put in possession of the property prior to the Act came into force. All the lessees granted subsequent to the Act and the Rules framed thereunder are governed by the terms and conditions of auction. On the expiry of the term, they are deemed to be encroachers and they are not entitled for any benefit. The petitioners came into possession of the property during the year 2003-2004 and thus cannot claim any benefit under the Act. Even on facts, the petitioners are not entitled for any benefit conferred under Section 82(2) of the Act as they are neither landless poor nor their income is less than Rs.30,000/- per annum. In the aforesaid circumstances, the representation of the petitioners had been rejected and no rights are conferred o the basis of the letter issued by the Assistant Commissioner. The rights of the parties

had not been adjudicated while forwarding the said letter. Further, with reference to the averments in para-9 of the affidavit, it is stated that in the letter of the Assistant Commissioner dated 25-5-2004, the rights of the parties had not been adjudicated and there is no decision within the meaning of Rule 3 of the Rules. Neither it is appealable nor the petitioners pleaded estoppel and hence the averments in this regard are wholly unsustainable. It is also stated that the petitioners manipulated the records and got the letter from the 1st respondent by playing fraud and misleading the Endowments Department. Further, it is settled proposition of Law that the relief obtained by playing fraud cannot be sustained. Further, the letter of the Assistant Commissioner dated 25-5-2004 not being an order, the same does not require to be challenged and hence the impugned order does not call for any interference. Further, the averments in para-10 of the affidavit that the petitioners are landless poor and they do not own any land are absolutely false and they cannot be termed as landless poor. No right of the petitioners had been infringed, particularly when they came into possession pursuant to the auction held for the year 2003-2004. The proceedings had been issued after considering the matter

in detail and in the said circumstances the impugned order does not call for any interference and the petitioners if they are aggrieved, can prefer Appeal as they have an effective alternative remedy provided under the Rules. There are no merits in the Writ Petition and the same is liable to be dismissed in limini.

13. In the reply affidavit filed, in reply to the counter affidavit filed by the respondents 1 and 2 it is stated that it is true that the 3rd respondent temple is having land in five survey numbers, but the petitioners are not the tenants of the lands in Sy.Nos.17 and 473 and petitioners have no claim whatsoever in respect of the said Sy.Nos.17 and 473. It is also stated that the averment that the petitioners are not the landless poor persons and that they own other lands in the village in Sy.Nos.319/A, 320, 696/AA, 701/A, 702, 280/A and 755 having a total extent of more than Acs.5.00 each is totally false and the same is to the knowledge of the respondents 1 and 3. It is reiterated that the petitioners have no right of the claim in respect of the said survey numbers. Further, it is stated that though it is stated that a statement had been enclosed to the counter affidavit as mentioned, no such statement was served on to the petitioners' Counsel. Further, it is incorrect to say that the

petitioners had played fraud and produced false records before the then Assistant Commissioner. The averment that the 4th respondent submitted his report on 28-6-2005 with the details of survey numbers and the extents of the land owned by the petitioners is totally false. The 1st respondent having referred to such a report failed to file the same before this Court and the 1st respondent by suppressing the true facts is trying to mislead this Court. It is also further stated that the 1st respondent appears to have confused in understanding the Rules issued under the Act. Notice required under Rule 3 of the Rules is different from the notice to be issued in Form-1. Therefore the averments raised in this regard by the respondents are totally misconceived and baseless. Further it is stated that the averment that as per the report of the 4th respondent that the petitioners 2 and 3 are employees working in BHEL is false. All the petitioners are residents of Veepangandla village and their names are also entered in the voters list with respective house numbers. In fact, the 2nd respondent, P.Harinatha Reddy, availed agricultural loan based on the lands in question from Indian Overseas Bank, Veepangandla branch in the year 2000 and the said loan is still outstanding. The further

averments in relation to the 4th respondent are all baseless. It is not open for the 1st respondent to infer that the report of the 4th respondent is based on the revenue entries. In fact, the averments of the respondents are quite contrary to the entries in the revenue records. As already stated in the affidavit filed in support of the Writ Petition, the so-called report of the 4th respondent was obtained from the Superintendent of the office of the 4th respondent in the absence of the regular incumbent of the Post of the Mandal Revenue Officer. The entire basis of the impugned proceedings is the said report furnished by the 4th respondent. It is further stated that the local M.L.A. J.Krishna Rao who is adversely interested against the petitioners for political reasons, is behind the entire episode and pressurizing the respondents 1, 3 and 4 to evict the petitioners from the lands in question by adopting one method or the other. The 1st respondent is acting to the tune of the local M.L.A. and attempting to deprive the petitioners of their legitimate right.

14. In W.P.No.16503/2005, almost the same averments as referred to supra in W.P.No.14982/2005 had been repeated and the same proceedings had been questioned. In the counter affidavit filed by the

respondents 1 and 2 and also the counter affidavit filed by the 3rd respondent, substantially the same stand had been taken and hence the respective stands taken by the parties in the pleadings in W.P.No.16583/2005 being the same, the said pleadings are not repeated.

15. The relevant proceedings had been referred to supra. Several of the facts appear to be not in serious controversy. Strong reliance was placed on the decision of the Apex Court in **A.A.Gopalakrishnan Vs. Cochin Devaswom Board** [1] wherein the Apex Court observed at para-10 as hereunder:

> "The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaits/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees or boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful

claims or misappropriation".

Reliance also was placed on **Veka Venkata Krishna Reddy and others Vs. Ramalingeswara Swamy Devasthanam and another** [2] wherein a learned Judge of this Court at paras 3 and 4 observed :

> "Rule 7 of A.P.Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules') and provisions of similar rules earlier to these; whether made under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 or under the A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987 (for short 'the New Act'), as well as the general principles of Administrative Law and authoritative precedents, obligate Endowment properties to be alienated including by way of lease only by a transparent public process in a manner which would ensure the fetching of a competitive return on Endowment properties and not by clandestine and subrosa private understandings between Endowment officers or managers of temples and private individuals. The unauthorised occupation of the Endowment lands by the petitioners without a lease deed executed in their favour by or on behalf of the Endowment after following the due process of law; substantive and procedural, would not elevate the occupation of the petitioners to the status of cultivating tenants as understood by the provisions of the New Act. The expression 'cultivating tenant' in Section 82 of the New Act, must mean a

cultivating tenant under a lawful, duly executed lease and not a person who in the beneficiary of a negligent or careless exercise of *ultra vires* conduct of endowment officials acting in defiance of the provisions of the Act and the Statutory rules – see in this connection (Budhan Singh v. Nabi Bux, 1969(2) SCC 481 – paras 12, 13). There is no exclusion in this principle by the mere fact that the petitioners are in such an unauthorised occupation since long or from times immemorial. The petitioners do not claim any prescriptive title or ownership to the lands in question.

In the circumstances above, as the petitioners are not cultivating tenants within the meaning of the said expression *qua* Section 82 of the New Act or the rules, the petitioners cannot be considered to be landless poor persons for the benefits under Section 82 of the Act. As they are encroachers, as is apparent, they cannot resist the impugned notification issued by the 1st respondent-*Devasthanam*, proposing conduct of a public auction for grant of leasehold rights of its lands. The petitioners have no *locus standi* to claim any such relief".

Further, strong reliance was placed on **N.Mallakanti and others Vs. Chennakesava Swamy Temple, Gargeyapuram village, Kurnool and another** [3] wherein a learned Judge of this Court at para-10 observed :

"A reading of the above rule would show that a

leaseholder shall have to be issued notice in Form No.1 informing him that the lease stood cancelled under Section 82(1) of the Act, the leasehold rights in respect of the lands are proposed to be leased out as per the rules and calling upon the tenant to forthwith handover possession of the lands. The tenants shall also be informed that if he fails to handover possession within 30 days (as seen from Form No.1) he shall be evicted invoking the provisions of Sections 84, 85 and 86 of the Act treating the tenant as an encroacher under Section 83(4) of the Act. By Section 82(1) the Law treats a lease as cancelled and the rules enable the Executive Officer of the Temple to take possession in accordance with Sections 84 to 86. Be it noted under Sections 84 and 85, it is competent for the Assistant Commissioner to evict a person in possession of the temple property with the aid of the police. Therefore where the agricultural lease stands cancelled the temple is required to take possession by serving Notice in Form No.1 read with Rule 5(1) of the Rules. The Temple or the Assistant Commissioner are not required to approach the jurisdictional Deputy Commissioner of Endowments for an order to remove the encroachment. By reason Rule 5(1) the Law introduced as fiction to the effect that a tenant who is not a landless poor person, and who fails to handover possession within 30 days after receipt of the Notice in Form No.1, is deemed to be an encroacher and without any further order, he can be evicted or removed with police aid under Sections 84 and 85 of the Act. The submission of

the learned Counsel for the petitioner is therefore misconceived and this point is answered accordingly against the petitioner."

16. The specific stand taken by the learned Government Pleader for Endowments is that inasmuch as Rule 5(1) of the Rules would be attracted, the persons other than landless poor persons having been satisfied in the light of the report submitted by the Mandal Revenue Officer at the relevant point of time, the Rule had been complied with by issuing Form-1 as contemplated by the Rule and hence since the prior recommendation if any made by the Assistant Commissioner of Endowments Department being of no consequence, inasmuch as the writ petitioners were put on notice, there is no question of either violating the Rules or the impugned proceedings being vitiated for want of notice or for violation of principles of natural justice. It is true that a remedy by way of Appeal is provided for and certain submissions were also made that this being a statutory Appeal, without availing that remedy, the writ petitioners cannot invoke the jurisdiction of this Court straightaway under Article 226 of the Constitution of India. On a careful reading of the prior order and the subsequent order which had been impugned at a particular point of time, the Assistant Commissioner of Endowments Department, clearly

observed that the petitioners are entitled to the benefits as landless poor persons. However, subsequent thereto on the strength of the report of the Mandal Revenue Officer it is stated that the impugned order was made being satisfied that the writ petitioners are not landless poor persons. Hence, the crucial question to be decided, predominantly, is a question of fact, i.e., whether the writ petitioners are landless poor persons or not. When at a particular point of time, the Assistant Commissioner of Endowments Department having observed that the writ petitioners are entitled for the benefits as landless poor persons, had forwarded the proceedings to the Commissioner of Endowments and on the strength of a subsequent report of the Mandal Revenue Officer, if again the same to be reconsidered, this Court is of the considered opinion that the writ petitioners should be put on notice relating to the report of the Mandal Revenue Officer and permit the writ petitioners to file appropriate objections in this regard and the concerned Assistant Commissioner, Endowments Department is expected to make a detailed enquiry especially when the subsequent Assistant Commissioner, Endowments intends to annul the order made by the earlier Assistant Commissioner, Endowments. In such cases, drawing a hair-splitting

classification between Rule 5(1) and Rule 5(2) of the Rules and Form-I and Form-II and taking a stand that the Rules had been complied with in relation to the issuance of notice and hence proper opportunity had been given to the writ petitioners, in the considered opinion of this Court, cannot be a sustainable stand. The competent authority who is expected to make the enquiry into such a crucial aspect relating to certain of the benefits to be conferred on such parties is expected to act rationally, reasonably and in a fair manner. The non-furnishing of the report of the Mandal Revenue Officer to the writ petitioners also in a way had caused prejudice to the writ petitioners, especially in the light of the prior order made by the then Assistant Commissioner, Endowments, conferring certain benefits as reflected from the observations already specified above. It is no doubt true that the right by way of statutory Appeal is available, but this is a case where at a particular point of time, the then Assistant Commissioner, Endowments observed in a particular way and the same was deviated by the subsequent Assistant Commissioner, Endowments, without affording opportunity and the stand taken that an application in accordance with Law had not been made also cannot be a sustainable ground in the light of the specific references in the impugned proceedings, already specified above. Hence, viewed

from any angle, this Court is satisfied that the impugned order in these Writ Petitions had not been made in accordance with Law and the same is hereby quashed and the matter is remanded to the competent authority to give opportunity to the writ petitioners by furnishing the report of the Mandal Revenue Officer and also the other relevant material and further inviting the objections in this regard and make a thorough enquiry taking into consideration the prior order made by the Assistant Commissioner, Endowments and also the relevant provisions of the Act and the relevant provisions of the Rules as well specified above and decide the matter afresh in accordance with Law. Till an appropriate decision is taken by the competent authority, status quo as on today to be maintained.

17. Accordingly, the Writ Petitions are hereby allowed to the extent indicated above. No order as to costs.

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Justice P.S.Narayana

Date : -12-2007

L.R. copy to be marked : YES / NO

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[1] 2007(7) SCC 482

[2] 2007(1) A.L.D. 262

[3] 2004(2) A.L.D. 148